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Before the
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

MAY - 6 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of:

Amendment of the Commission's
Rules To Provide Channel
Exclusivity To Qualified Private
Paging Systems at 929-930 MHz

PR Docket No. 93-35
RM-7986

To: The Commission

COMMENTS OF CELPAGE, INC.

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SUMMARY OF COMMENTS

Celpage, Inc. is a licensed PCP operator operating throughout the Commonwealth of Puerto Rico and in the continental United States, and has been an active interested party in various FCC rulemaking proceedings pertaining to PCP and RCC paging issues.

Celpage approves of the Commission's proposal to allow exclusivity to qualified 900 MHz PCP licensees and applicants. However, Celpage is concerned that exclusivity in only one PCP band will lead to even greater congestion on other bands than has already occurred, and increase the probability of harmful interference. Celpage urges the Commission to extend a uniform exclusivity standard to all PCP bands, or to require interconnection of co-channel paging terminals on non-exclusive channels. To promote competition. forestall speculation and

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COMMENTS OF CELPAGE, INC.

Celpage, Inc., through its attorneys, and pursuant to Section 1.415 of the Commission's Rules, 47 C.F.R. § 1.415, respectfully submits these Comments in response to the Commission's above-referenced Notice of Proposed Rulemaking ("Notice"). Celpage supports some of the rule modifications recommended in the Notice, and has some suggestions for eliminating or modifying others, for the following reasons:

I. Statement of Interest.

Celpage is the licensee of Private Carrier Paging ("PCP") facilities on the 152.480 MHz frequency throughout the Commonwealth of Puerto Rico, and is the licensee of PCP facilities throughout the continental United States. Celpage has quickly grown to become one of the largest paging companies in Puerto Rico. Celpage has also been an active member of the Association for Private Carrier Paging ("APCP") virtually since its inception, and has previously been an interested party in FCC rulemaking proceedings pertaining to PCP and RCC paging issues.

The rule changes proposed in the FCC's Notice are likely to have an immediate impact on Celpage's PCP business. Moreover, due to its practical experience in this field, Celpage is well-qualified to comment on the advantages and disadvantages of the proposed rule changes. Thus, Celpage has standing as a party in interest to file formal comments in this proceeding.

II. Summary of Notice

The Notice proposes to allow PCP licensees on the 929-930 MHz band to gain channel exclusivity on thirty-five (35) of the forty (40) available channels, amending Section 90.494 of the Commission's Rules, 47 C.F.R. § 90.494.¹ The Notice would also add a new Section 90.495, defining the requirements for exclusivity on a local, regional or nationwide basis, and Section 90.496, allowing an extended implementation, or "slow-growth", schedule for proposed systems of more than thirty (30) transmitters. Notice, Appendix A.

Celpage strongly supports the Commission's plan to grant exclusivity to PCP licensees, to prevent harmful interference as frequencies become more congested, and to encourage investment in new technology and growth in paging systems.² However, Celpage disagrees with some aspects of the exclusivity provisions as

¹ Currently, 20 channels are allotted for commercial use, and 20 for non-commercial use.

² Celpage notes the unsurprising opposition to this proposal from MTel, a nationwide radio common carrier that is obviously seeking to avoid competition from potential nationwide PCP operators on exclusive frequencies.

proposed by NABER in its Petition for Rulemaking, and as espoused by the Commission in its Notice.

III. Background

Since the initiation of PCP service on the 900 MHz band just over a decade ago,³ the PCP industry has grown phenomenally. Paging technology has improved, while service costs have decreased, as the Commission notes. Notice at ¶ 5. During this period of rapid growth, though licensees both large and small have managed to successfully share their channels, incidents of co-channel interference and sharing disputes have been on the rise, just as Celpage predicted in its earlier comments. The Commission's Rules are proving to be increasingly inadequate to keep up with the number of users that share these channels. Still, the PCP industry to date has been a success story due in some part to the fact that the FCC's Rules apply equally across the PCP spectrum, creating a "level playing field" enjoyed by all licensees.

Although industry growth and the resulting congestion in some frequency bands may signal a need for a change to exclusive channel use, Celpage submits that the future of the industry depends on maintaining the level playing field that licensees now enjoy. Where change in the Rules is needed, it must be even-handed and equitable to prevent disruption of this heretofore

³ See First Report and Order, Gen. Docket No. 80-183, 89 FCC

successful industry.

IV. Exclusivity Should Be Extended to All PCP Bands.

Celpage strongly urges the Commission to extend a uniform doctrine of earned exclusivity to all PCP operators regardless of frequency band. By restricting the subject Notice to 900 MHz PCP licensees, the Commission may place the successful future of the PCP industry at risk by creating desirable and less-desirable zones of operation based on frequency selection. Celpage concurs with the Commission that exclusive channel use promotes investment in technology and system expansion (Notice at ¶ 16). Conversely, by preserving fewer channels to be non-exclusive, the FCC could seriously undermine those objectives for all but 900 MHz licensees.

Small operators traditionally the backbone of the PCP

Celpage urges the Commission to more closely examine the likely effect of its proposals on the remaining, non-exclusive PCP bands.

A. Harmful interference already occurs in lower PCP bands.

In its Notice, the Commission acknowledges the existence of congestion in lower PCP frequency bands at 150 and 460 MHz.

Notice at ¶ 6. These frequencies have traditionally been the most desirable for PCP operations due to equipment availability and the bands' favorable propagation characteristics. With the rapid growth of PCP service, these shared channels have indeed become increasingly crowded.

With more users and more transmissions comes the greater likelihood of harmful interference to shared-use operations; this has been occurring in the 150 and 460 MHz bands with increasing frequency. Co-channel licensees must fight for available air time. While most do cooperate to try to prevent interference, some licensees are not as careful as they could be. The Commission's current Rules call for licensees to prevent such interference; however, even when licensees "monitor" channels in an effort to prevent interference, as customer bases grow it becomes increasingly probable that co-channel licensees' equipment will simultaneously "seize" a shared channel, thereby losing all message transmissions.⁵ That situation is unacceptable to customers and to PCP licensees.

⁵ In the case of digital paging transmissions, an entire "batch" of numerous paging messages could be lost when this interference situation occurs.

B. Proposed 900 MHz exclusivity will
increase interference elsewhere.

Celpage agrees with the Commission that "[g]ranting qualified licensees exclusive rights to a channel will eliminate the inefficiencies inherent in sharing channels." Notice at ¶ 16. However, that is only true for the channels which are assigned exclusively. By seeking to "prevent congestion before it occurs" (Notice at ¶ 17) at 900 MHz, the Commission appears to be abandoning the many PCP operators licensed in other frequency bands.

If the Commission's proposals are adopted in their present form, the more-desirable 929 MHz channels are very likely to be the first targeted for licensing by qualified existing licensees, by lower-band licensees seeking to relocate, or by new applicants. Once these channels are assigned, all other operators will have no choice but to migrate to the remaining shared channels, most of which would be at 150 and 460 MHz. Even with the migration of some licensees to the 900 MHz band, there would be plenty of PCP operators left to congest these non-900 MHz channels, especially given the steady growth of PCP customer activations. Celpage sees no real likelihood of avoiding increased congestion and harmful interference on these channels unless they are also included under the umbrella of exclusivity provisions. Therefore, Celpage agrees with Dial-A-Page and other commenters which urge that this rulemaking proceeding be extended

to all PCP frequency bands. See Notice at ¶ 12.⁶

C. Exclusivity Should be Uniform and Simultaneous.

Celpage notes that PCP frequency bands below 929 MHz would be eligible for a form of earned exclusivity under the Exclusive Use Overlay ("EUO") provisions of the so-called "Refarming Docket". See Notice of Proposed Rulemaking, PR Docket No. 92-235, 7 FCC Rcd. 8105 (1992). However, Celpage is concerned about inherent inequities in promulgating two very different sets of rules, based solely on frequency selection, to govern the same radio service. Instead, Celpage suggests that one uniform set of exclusivity rules be adopted.

Exclusivity is needed to ease interference problems in the lower PCP bands, and to prevent the same congestion in the 929 MHz band. Moreover, it should be implemented simultaneously in all bands to prevent the snatching up of exclusive channels in one area, and the corresponding degradation of service on remaining non-exclusive channels. Celpage notes that the subject rulemaking proceeding appears to be moving toward a conclusion much more quickly than the Refarming Docket, which, given the size and controversial nature of the undertaking, is likely to go on for many months.

D. For non-exclusive channels, the Commission should require "tying" of terminals.

If the Commission will not consider adopting exclusivity

⁶ However, Celpage disagrees with Dial-A-Page's suggestion of loading requirements, since some PCP channels are not currently congested and loading standards are difficult to enforce. Cf., Id.

provisions for all PCP bands at this time, Celpage submits that the only way to provide interference-free service on shared PCP frequencies is to require "tied terminals", to prevent simultaneous seizure of the frequency.

There are many instances in shared-use PCP operations where channel monitoring will not alleviate interference problems. In those cases, co-channel systems must be carefully engineered with some form of airtime "arbitrator", and some method of interconnecting co-channel paging terminals, so as to preclude the possibility of unintentional co-channel interference.

The FCC has previously stated that "[r]equiring licensees to install terminal connection equipment is one of a variety of approaches that we currently may take in order to resolve such interference conflicts." Amendment of Section 90.173, order RM-7873 (February 24, 1992). Moreover, NABER has been expressly authorized by the FCC to make such recommendations: "certified frequency coordinators may choose to make informal recommendations to the Commission regarding possible approaches to reducing interference" Id.

Unfortunately, Celpage and other PCP operators can testify from experience that even when NABER has made such express recommendations, and expressly issued a coordination recommendation on the condition that an applicant agree to tie its terminals in with other existing paging terminals, the FCC has not supported NABER's recommendation. It simply defies logic for the FCC to propose exclusivity as a means of eliminating

congestion and interference problems, while turning a deaf ear to a simple engineering proposal that has been endorsed by NABER, by PCP engineers, and by numerous PCP operators large and small. If the FCC is truly concerned about protecting PCP licensees and customers from interference and congestion problems, it should do what NABER asked it to do two years ago: adopt rules that expressly empower NABER to require PCP applicants to install terminal connection equipment prior to commencing operations on a congested PCP channel.

V. Licensees Should Be Limited to One Exclusive Frequency.

Celpage appreciates the Commission's concern regarding operators' attempts to block competition by applying for more than one exclusive channel. Notice at ¶ 34. However, Celpage suggests that the current proposal, which would allow a second exclusive frequency once the first six-transmitter system is complete and operating (and presumably a third or fourth after each previous system was completed), is not sufficiently strict to prevent competition. Instead, Celpage recommends that each

be assured of continued growth. The restriction would prevent large carriers with access to large amounts of capital from constructing multiple exclusive systems in various markets, thus precluding to interested applicants several available channels in a short period of time. With a limit on exclusive licenses, carriers would also be less likely to inefficiently use their exclusive channels, such as by loading them with tone-and-voice technology until the channel is needed, then moving to more efficient digital pagers.

Most importantly, with an exclusive channel limitation, valuable spectrum would be reserved for the future growth of the industry. PCP service is still relatively young; several years of additional expansion, with new licensees, new technologies and new services, are likely to occur. To foster that expansion and promote the resulting competition, spectrum must be available when it becomes needed. An apt example was the FCC's early decision to set aside a block of channels in the Cellular Radio Service for "future growth."⁸ Celpage believes that restricting present licensees to only one exclusive channel will likewise leave enough PCP spectrum available to nurture and accommodate the future growth of PCP services.

VI. Regional Exclusivity Standards.

Celpage agrees with the Commission's proposal regarding

⁸ See 900 MHz Reserve Band Allocations, 2 FCC Rcd. 1825 (1986).

regional exclusivity standards. Notice at ¶ 24. Celpage is not as concerned as the Commission about the potential for "blocking out" of some areas of a region, since carriers will locate their transmitters to follow the business and use patterns of their customers. Celpage finds the FCC's proposals in this regard to be reasonable; most serious carriers are likely to construct at least six transmitters in any large market in a region.

Celpage thus disagrees with the suggestion of the Association of Private Carrier Paging ("APCP") that regional licensees will avoid regional urban markets already served by local licensees. Few successful business owners would forego the better business opportunities of a large market merely to concentrate on rural areas, where they could expect to find only scattered customers. The FCC's standards for regional exclusivity as proposed should successfully limit grants of these licenses to "serious" regional operators.

VII. Station Separation and Operating Power.

To protect co-channel licensees from harmful interference, Celpage concurs with the Commission's proposed table for station separation, which bases the required separation distance on actual antenna height and transmitter power. Notice at ¶ 23; Notice at Appendix A, proposed § 90.495(b). However, Celpage notes that the proposed table includes maximum effective radiated power (ERP) limits of up to 3500 watts; current Commission Rules restrict PCP transmitters to a maximum of 1000 watts. See 47

C.F.R. § 90.494(f).

Celpage would approve of an amendment to the Rules to permit PCP stations to operate at up to 3500 watts, as is currently proposed for 900 MHz radio common carrier stations.⁹ Higher power limits would allow licensees to construct fewer, more efficient transmitters to cover their service areas. This would, in turn, reduce their operating costs, allowing more investment in new technology and services. Also, the higher power limits will ensure a level playing field for PCP operators that compete directly against RCCs.

**VIII. Financial Requirements/Performance Bonds
for "Slow-Growth" Systems.**

Celpage agrees with the Commission's proposal to allow a "slow-growth" option for exclusive-channel systems of more than thirty transmitters. Celpage also agrees that a required showing of financial ability to complete the system is reasonable for slow-growth eligibility. However, Celpage joins the APCP in recommending that slow-growth licensees be held to completion deadlines and that they be required to complete at least thirty transmitters within the first eight months after license grant. This would deter speculation by carriers that might seek licenses for large exclusive-channel systems without intending to construct the entire system.

To further deter speculation, Celpage approves of the APCP

⁹ Notice of Proposed Rulemaking, CC Docket No. 93-116, April 23, 1993.

recommendation of requiring performance bonds to underwrite the construction of a slow-growth system. To prevent low estimates of construction costs, Celpage agrees with APCP's proposal that these bonds be based on the maximum forfeiture amount the Commission could impose for failure to complete each station in the system.

IX. NABER Should Remain the Sole PCP Coordinator.

Celpage strongly urges the Commission to retain the National Association of Business and Educational Radio ("NABER") as sole frequency coordinator for PCP applicants. After several years' experience in this field, NABER has compiled a PCP database which would be extremely difficult to duplicate. This database would also be invaluable in assigning exclusive frequencies under the FCC's proposed rule amendments, and in grandfathering existing systems.

Celpage disagrees with the Commission's proposal to add two additional frequency coordinators to the PCP service. Notice at ¶ 40. Neither ITA nor APCO has any experience serving the private carrier paging industry, and neither has knowledge of the industry's particular requirements. Also, neither of these coordinators has NABER's database: they would operate with an immediate handicap in attempting to intelligently coordinate PCP licenses. Moreover, the three coordinators would have to work together to ensure that their recommendations do not conflict with one another's, and to keep their shared databases current.

That additional work would inevitably result in higher coordination fees to applicants, with a lower quality of service.

X. The FCC Should Adopt Explicit Coordination Standards.

To improve PCP spectrum efficiency, Celpage urges the Commission to incorporate into the Rules explicit standards for approval of frequency coordinator recommendations. PCP applicants are placed at a disadvantage by uncertainty as to whether NABER's recommendations will be enforced by the FCC as their applications move toward license grant. Faced with this uncertainty, applicants cannot order station equipment or take other steps that would help them meet the service's eight-month construction deadline and begin providing service to the public. A consistent body of precedents, based on coordination standards set forth in the Commission's Rules, would greatly improve this situation.

CONCLUSION

FOR ALL THE FOREGOING REASONS, Celpage supports the FCC's proposal to allow exclusivity to PCP licensees, but requests that the Commission extend its proposal to all PCP frequency bands, restrict PCP operators to one exclusive license only, and take other actions to encourage and protect PCP operations in a manner consistent with the comments made herein.

Respectfully submitted,

CELPAGE, INC.

By: _____

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CERTIFICATE OF SERVICE

I, Dennean Myers-Ferrell, a secretary in the law firm of Joyce & Jacobs, do hereby certify that on this 6th day of May, 1993, copies of the foregoing Comments of Celpage, Inc. were mailed, postage prepaid, to the following:

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